

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub-Committee		Classified		

Report of David Tolley Head of Environmental Health and Trading Standards Originating Officer: Lavine Miller-Johnson Licensing Officer	Title Licensing Act 2003 Application for Review under Section 53 A of the Licensing Act 2003 for Wicked Fish, Queens Yard White Post Lane London E9 5EN Ward affected. Bow East
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1.0 Summary

Licence Holder: **Wicked Fish Ltd**

Name **Wicked Fish**

Address of Premises: **Queens Yard, White Post Lane
London E9 5EN**

Full Review under Section 53A of the Licensing Act 2003 triggered by the Metropolitan Police

2.0 Recommendations

- 2.1 That the Licensing Committee considers the application for review and then adjudicates accordingly

LOCAL GOVERNMENT 2000 (Section 97)
LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT

Brief description of "background paper"

Tick if copy supplied for register

If not supplied, name and telephone number of holder

File
Section 182 Guidance
LBTH Licensing Policy

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3.0 Review Application

- 3.1 This is an application for a review of the premises licence for Wicked Fish, Queens Yard White Post Lane London E9 5EN
- 3.2 A copy of the review application is attached in **Appendix 1**.
- 3.3 Evidence supporting the review can be found in. **Appendix 2**

4.0 The Premises

- 4.1 The premises licence was first issued on the 21st December 2022. A variation of the premises licence was granted on 25th April 2022 to extend the hours for late night refreshment. A further variation was granted on 7th December 2022 for the supply of alcohol.
- 4.2 A copy of the premises licence is in **Appendix 3**.
- 4.3 A map of the premises is at **Appendix 4**.
- 4.4 Images of the premises and surrounding area can be found at **Appendix 5**

5.0 Representations

- 5.1 This hearing is required by the Licensing Act 2003, because a review has been triggered by Trading Standards.
- 5.2 The review is also being supported by the following:
 - Licensing Authority (RA) - See **Appendix 6**
- 5.3 Only representations that relate to the following licensing objectives are relevant:
 - the prevention of crime and disorder
 - public safety
 - the prevention of public nuisance
 - the protection of children from harm
- 5.4 In the view of the responsible authorities it is necessary to achieve the licensing objectives of the prevention of public nuisance and prevention of crime & disorder.

6.0 Review Explained

- 6.1 The Licensing Act 2003 was described by the Government at the time as “light touch” but as Baroness Blackstone stated in the Lords at the time

of the second reading (26 Nov 2002) “Local residents and businesses as well as expert bodies, will have the power to request that the licensing authority review existing licences where problems arise. Such a review could result in the modification of the licence, its suspension, or ultimately, revocation.”

- 6.2 The Home Office has issued guidance under Section 182 of the Licensing Act 2003 in relation to reviews and that is contained in **Appendix 7**. It is available on the Government’s website, www.homeoffice.gov.uk. It was last revised in April 2018.
- 6.3 Members are particularly asked to note the comments in relation Crime and Disorder. In particular the home office advice is that “The role of the licensing authority when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure that the crime prevention objective is promoted.”
- 6.4 In relation to its advice on representations the home office has also advised that “there is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations.” It has also issued revised guidance about Crime and Disorder. **See Appendix 8**
- 6.5 Members should also note the Council’s Licensing Policy in relation to Crime and Disorder, the relevant parts of which are contained in **Appendix 9**.
- 6.6 Guidance Issued by the Home Office concerning Public Nuisance **Appendix 10**.
- 6.7 London Borough of Tower Hamlets Policy in relation to the prevention of Public Nuisance **Appendix 11**.
- 6.8 The Home Office has advised that in relation to reviews “ Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation. ”
- 6.9 An interested party or a responsible authority can trigger a review at any time, but the grounds must be relevant to the licensing objectives. The form of the application, and the advertisement of the review are the subject of regulations (The Licensing Act 2003 (Premises Licences and Club Premises Certificate) Regulations 2005). In addition, the licensing authority has to satisfy itself of certain matters in relation to the Licensing

Act 2003. The Licensing & Safety Team Leader is the delegated officer who deals with this on behalf of the Licensing Authority. All the matters stated in 5.0 were considered before any representations were accepted for inclusion in this report.

6.10 The Licensing Act 2003 requires that the Licensing Authority satisfies itself that it should reject the grounds for a review because:

- The ground is not relevant to one or more of the licensing objectives
- In the case of an application by a local resident that the application is frivolous, vexatious or repetitious.

7.0 Review Advertisement

7.1 The review was advertised by a blue poster, next to the premises, by the Licensing Section. This was periodically monitored by the Section to ensure it was on continuous display, and replaced as necessary. It was also advertised at Tower Hamlets Town Hall, 160 Whitechapel Road, London E1 1BJ.

7.2 The party that triggers the review must notify the licence holder and responsible authorities. The review documents were sent to the licence holders.

7.3 The procedure for a review can be summarised as follows:

- A review is triggered by a responsible authority or interested party
- Consultation is conducted for 28 full days
- Other responsible authorities or interested parties may join in the review
- Members conduct a hearing
- Members make a determination
- All the parties to the review have the right of appeal to the magistrates court (i.e. the licence holder, the person who triggered the review and those who have made a representation).

8.0 Licensing Officer Comments

8.1 When licence holders or designated premises supervisors move, leave a premises or dispose of their premises they remain responsible in law until they have informed the licensing authority and surrendered the licence or arranged a transfer, which may involve notification to the Police as well. Any licensees or designated premises supervisors who are not sure what to do should contact the licensing authority. Please note that should the DPS cease to work/be employed by the premises the Licensing Authority will consider that there is no DPS for those premises. This consideration shall apply regardless of whether that person is still named on the Premises Licence, or whether they have asked for their name to be removed from it. This consideration shall apply until such time that an application is received to nominate a new premises supervisor. In such cases, the Licensing Authority shall expect no sales of alcohol to

take place until an application to vary the DPS has been submitted to the Licensing Authority. (27.1 Licensing Policy)

8.2 Members must consider all the evidence and then decide from the following alternatives:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence.

8.3 The licence should only be suspended or revoked if Members believe that alterations to the existing licence, including imposing new conditions does not have a reasonable prospect of ensuring that the licensing objectives are met.

8.4 Members should bear in mind that conditions may not be imposed for any purpose other than to meet the licensing objectives.

8.5 In all cases the Members should make their decision on the civil burden of proof that is “the balance of probability.”

8.6 In all cases Members should consider whether or not primary legislation is the appropriate method of regulation and should only consider licence conditions when the circumstances in their view are not already adequately covered elsewhere.

9.0 **Legal Comments**

9.1 A legal officer will advise Members at the hearing.

10.0 **Financial Comments**

10.1 There are no financial implications in this report.

11.0 Appendices

Appendix 1	Copy of the review application
Appendix 2	Copy of the premises licence
Appendix 3	Supporting Evidence
Appendix 4	Maps of the premises and surrounding area
Appendix 5	Images of the surrounding area
Appendix 6	Representation of Licensing Authority (RA)
Appendix 7	Guidance issued under Section 182 by the Home Office for reviews
Appendix 8	Guidance Issued by the Home Office under Section 182 of the Licensing Act 2003 concerning Crime and Disorder
Appendix 9	London Borough of Tower Hamlets Licensing Policy in relation to the prevention of Crime and Disorder
Appendix 10	Guidance Issued by the Home Office concerning Public Nuisance
Appendix 11	London Borough of Tower Hamlets Policy in relation to Public Nuisance